

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: CONVERGENT TELEPHONE CONSUMER
PROTECTION ACT (TCPA) LITIGATION**

MDL No. 2478

TRANSFER ORDER

Before the Panel:* Defendant DISH Network L.L.C. (DISH) moves under Panel Rule 7.1 to vacate our order that conditionally transferred the action listed on Schedule A (*Cosby*) to the District of Connecticut for inclusion in MDL No. 2478. Neither plaintiff nor co-defendant Convergent Outsourcing, Inc. (Convergent) responded to DISH's motion to vacate.¹

DISH's sole argument against transfer is that, unlike the actions in the MDL, it can demonstrate that plaintiff provided prior express consent and therefore cannot recover under the federal Telephone Consumer Protection Act (TCPA). *See* 47 U.S.C. § 227(b)(1)(B). This argument is unpersuasive because the Panel does not delve into merits issues when it makes transfer decisions. *See In re Maxim Integrated Prods., Inc., Patent Litig.*, 867 F. Supp. 2d 1333, 1335 (J.P.M.L. 2012) (“[t]he framers of Section 1407 did not contemplate that the Panel would decide the merits of the actions before it and neither the statute nor the implementing Rules of the Panel are drafted to allow for such determinations”) (quoting *In re Kauffman Mut. Fund Actions*, 337 F. Supp. 1337, 1339-40 (J.P.M.L. 1972)). Further, DISH can present this argument to the transferee court as a basis for dismissal or summary judgment.

After considering the argument of counsel, we conclude that *Cosby* involves common questions of fact with the actions previously transferred to MDL No. 2478, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Like the actions pending in the MDL, plaintiff in *Cosby* alleges that Convergent violated the TCPA when it, or its agents, contacted her on her cellular telephone, without prior consent, using an automatic telephone dialing system or an artificial or prerecorded voice. *See In re Convergent Tel. Consumer Prot. Act Litig.*, 981 F. Supp. 2d 1385 (J.P.M.L. 2013). *Cosby* thus will involve similar factual inquiries and discovery with respect to Convergent's policies and procedures for placing collection calls and for obtaining and recording a consumer's consent to receive such calls.


* Judge Charles R. Breyer took no part in the decision of this matter.

¹ “Failure to respond to a motion shall be treated as that party's acquiescence to it.” Panel Rule 6.1(c).

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IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the District of Connecticut and, with the consent of that court, assigned to the Honorable Alvin W. Thompson for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in cursive script, reading "Sarah S. Vance".

Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Lewis A. Kaplan
R. David Proctor

**IN RE: CONVERGENT TELEPHONE CONSUMER
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SCHEDULE A

Middle District of Georgia

COSBY v. CONVERGENT OUTSOURCING, INC., ET AL., C.A. No. 5:15-00369